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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH ALAN WILLIAMSON,

Defendant and Appellant.

C042866

(Super. Ct. No.
97F6888)

Defendant Keith Alan Williamson pled guilty to committing a lewd and lascivious act upon a child under the age of 14 years when defendant was 21 years old. (Pen. Code, § 288, subd. (a).) The trial court sentenced him to the middle term of six years, suspended execution of the sentence, and placed him on five years' probation in December 1997. One of the terms of probation required defendant to complete an adult sex offender treatment program.

A petition for revocation of probation was filed in March 2002 after defendant was dismissed from the Sex Offender Rehabilitative

Treatment program (SORT). The trial court sustained the petition following a contested hearing, denied reinstatement on probation, and ordered execution of the six-year prison term.

On appeal, defendant argues he was given insufficient notice of the violation that formed the basis of the decision to revoke his probation, and claims the trial court abused its discretion by declining to reinstate probation. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The conditions of defendant's probation included "[t]hat he meaningfully participate in, comply with and follow all the rules and requirements of, and complete a recognized adult sex offender treatment program as directed by the Probation Officer," and that "he not contact, attempt to contact, or be in the company of any child under the age of eighteen years unless accompanied by a responsible adult who is approved by the Probation Officer"

Defendant attended the SORT program at New Directions to Hope. Gerry Blasingame, the program director, explained the rules to defendant. Among other things, defendant was not allowed contact with minors or other program members. Before entering the program, defendant signed a treatment contract stating that he understood the rules. Sex offenders at SORT were instructed orally in the group sessions that if they were placed in a situation where they came in contact with a minor, even if the contact was unexpected or unavoidable, they were required to leave the situation immediately and report the incident to the program and their probation officer. The weekly check-in form used by SORT provided a place to report contact with minors.

Chelsey Chappelle was defendant's probation officer. Chappelle also supervised another registered sex offender, Lynn McKinney. In March 2002, Chappelle conducted a probation search of McKinney's residence. She found pictures of defendant hugging a young child later identified as his son. The pictures were taken by McKinney at the home of defendant's parents on Christmas Eve of 2000. Defendant was living with his parents at the time. According to defendant's mother, his ex-girlfriend unexpectedly stopped by with their son, and defendant spent about half an hour with the boy.

Defendant did not tell the probation office about the visit with his son. He did report the contact to SORT approximately 16 months after it occurred, but only when he was confronted by Chappelle with the pictures. Defendant acknowledged that he knew it was wrong to have contact with his son and not report it.

Defendant's therapist at SORT testified that defendant lied to the group on a weekly basis by not reporting the incident on his check-in sheet. Because his contact with his son and with another registered sex offender violated program rules, defendant was terminated from the program.

The petition for revocation of probation alleged defendant had violated probation because he "was terminated from . . . SORT for willful disregard for and failure to comply with program rules, specifically, unauthorized contact with a minor and lying to the group."

At the hearing, defense counsel questioned Blasingame about the reporting requirements of SORT's contract with defendant, and defendant's termination from the program. When Blasingame

acknowledged that the instructions on reporting contact with a minor were not in the written contract, the prosecutor made a relevance objection to questions about the contents of the written contract. In the prosecutor's view, "the violation alleges he had contact with a minor, not what he's supposed to do after he has that contact."

The court replied: "Well, the petition doesn't say anything about he failed to report his contact. The petition says . . . that he was terminated from the SORT program for a number of reasons, specifically unauthorized contact with a minor and lying to the group. [¶] . . . [¶] The second one being very unspecified." Since one of the terms of defendant's probation was that "he not contact, attempt to contact, or be in the company of any child under the age of eighteen years unless accompanied by a responsible adult who is approved by the Probation Officer," the court indicated defendant's primary responsibility when he found himself in the presence of his son was to "leav[e] immediately and report[] it to [the probation department]." The court went on to say: "Now, whether Mr. Blasingame's program told him to report it or not to report it is supplementary to those things."

Without explicitly ruling on the prosecutor's relevance objection, the trial court allowed Blasingame to testify about the SORT program rules requiring defendant to have left when he came in unauthorized contact with his son and to have reported to SORT, in his "weekly check-in," that he had had contact with his son.

At the close of the evidentiary hearing, the prosecutor argued that defendant violated probation by being "terminated [from SORT]

for failure to comply with rules, specifically unauthorized contact with a minor, lying to the group." The prosecutor emphasized: "The pictures are clear. [Defendant is] kissing his son on the cheek He's hugging him." The prosecutor continued: "The rules are what they are. He was aware of the rules, and he broke the rules."

Defense counsel acknowledged the unauthorized contact, but argued defendant was forthright when confronted with the pictures: "I think he should get credit for that"

The trial court responded: "I think both your presentations miss out on the point that I think I'm required to determine. Whether [defendant] was kissing his son or not kissing his son, quite frankly, . . . is really not something I'm overly concerned with. . . . [¶] The problem is that the kid was there to begin with, that Mr. McKinney [another registered sex offender] was there to begin with, and compounding it, [defendant] didn't report it. That's the big problem here. . . . [¶] . . . That was a transgression of the rules. It was a transgression of the rules on a weekly basis because he had that opportunity, and I suspect that he saw other individuals in that group taking that opportunity on a weekly basis to self-report whatever they might have done In my understanding or my belief the way the program works, that's what happens in part in group is that they reveal those things . . . and then the group discusses those"

The court sustained the allegations of the petition, declined to reinstate probation, and imposed the six-year sentence it had earlier suspended. The court explained: "I don't want anyone to

walk out of this courtroom this morning with the thought that I impose this sentence because, through conditions beyond [defendant's] control he spent, in the Christmas season, half an hour with his son. That is absolutely not the reason why your probation is revoked. . . . [¶] Your probation is revoked, . . . because you did not comply with the rules of the SORT program. Specifically, you lied to the individuals from the SORT program. Not only directly, but by omission. . . . [¶] What you are being penalized for is not reporting this incident, and other incidences of similar nature, and maintaining that attitude. That's not what the program is all about. It tears the heart out of the program. It makes any treatment possibilities null and void."¹

DISCUSSION

I

The conditions of defendant's probation included "[t]hat he meaningfully participate in, comply with and follow all the rules and requirements of, and complete a recognized adult sex offender treatment program as directed by the Probation Officer," and that "he not contact, attempt to contact, or be in the company of any

¹ Defendant takes issue with the trial court's comment that defendant did not report incidents of a nature similar to his contact with his son. Perhaps, the court was referring to evidence of defendant's failure to report his unauthorized contact with McKinney, a registered sex offender. Defendant also disputes, as unsupported by the record, the reference to his "maintaining that attitude," which defendant perceives to mean a "'bad attitude.'" But this comment could refer to the evidence that defendant's reporting requirement was a continuing one and that he repeatedly failed to reveal his unauthorized contact with his son and with McKinney.

child under the age of eighteen years unless accompanied by a responsible adult who is approved by the Probation Officer"

The petition for revocation of probation alleged defendant had violated probation because he "was terminated from . . . SORT for willful disregard for and failure to comply with program rules, specifically, unauthorized contact with a minor and lying to the group."

Defendant contends he "was denied due process of law because he was not given proper notice of the violation which formed the basis of the court's decision to revoke his probation." This claim of error is premised on defendant's belief that his "failure to report [his contact with his son] -- and not the contact itself -- became the sole ground on which [his] probation was revoked." Because the probation violation petition "did not list 'failing to report' as a potential ground for revocation of probation," defendant contends he was "not afford[ed] . . . sufficient notice of the charges against him; and, what made it worse yet was when his trial counsel attempted to explore the 'failing to report' . . . issue through cross-examination, the prosecutor repeatedly disavowed any intention of proceeding against [defendant] for failing to report." He also asserts that his effort to explore the failure to report was curtailed by the "trial court's instruction that the case did not turn on a failure to report." Thus, defendant argues, he "was not given full opportunity to prepare and defend himself against the alleged violation[.]"

Defendant's view of the record is too simplistic. The terms of his probation required defendant to "meaningfully participate

in, comply with and follow all the rules and requirements of, and complete a recognized adult sex offender treatment program as directed by the Probation Officer." (Emphasis added.) The petition alleged that defendant violated his probation because he "was terminated from . . . SORT for willful disregard for and failure to comply with program rules, specifically, unauthorized contact with a minor and lying to the group."

Thus, the petition put defendant on notice that he was charged with violating probation by (1) being terminated from SORT, i.e., failing to complete the adult sex offender treatment program that was required by the terms of his probation, and (2) willfully disregarding and failing to comply with program rules by having unauthorized contact with a minor and lying to the group about it, i.e., failing "meaningfully [to] participate in, comply with and follow all the rules and requirements of [the] program."

The fact the petition phrased the second aspect of the alleged violation as "lying to the group," does not mean the petition was insufficient to put defendant on notice that one aspect of his alleged noncompliance with the terms of probation was his failure to report his contact with his son. Since defendant was aware of the requirements of the probation officer and SORT, including the requirement to report any unauthorized contact with a minor, the "lying to the group" allegation was adequate to put him on notice that he was accused of violating probation by not reporting his contact with his son.

We see nothing in the record that precluded defendant from defending against this alleged violation. Because the language

of the pleading put defendant on notice of the charges against him, the prosecutor's mischaracterization of the petition at one stage of the hearing ("the violation alleges he had contact with a minor, not what he's supposed to do after he has that contact") did not deprive defendant of notice that his failure to report the contact with his son was a basis upon which to violate his probation. And, contrary to defendant's claim, there was no "instruction" by the trial court that "the case did not turn on a failure to report." Indeed, during the evidentiary phase of the hearing, the court noted the probation officer's testimony that, when he found himself in the presence of his son, defendant had a responsibility of "leaving immediately and reporting it [the contact] to [his probation officer]."

Moreover, defendant fails to suggest any defense to the charge. Either he complied with the rules by reporting the contact, or he violated the rules in lying about the contact by not reporting it. In fact, he admitted to his probation officer that "he knew he was not to have contact with his son *and that he never reported it*, and *he knew that what he was -- had done was wrong*." (Emphasis added.)

Defendant also is wrong when he claims that his failure to report his contact with his son "became the sole ground on which [his] probation was revoked."

The primary allegation was that defendant violated probation because he was terminated from SORT and, thus, did not complete an adult sex offender treatment program as required by the terms of his probation. Defendant could not, and did not, dispute that he was terminated from SORT, in part because of his unauthorized

contact with McKinney, a sex offender, and defendant's failure to report that contact. The trial court specifically commented on this aspect of the case. In response to counsel's arguments, the court noted in part: "I think both your presentations miss out on the point that I think I'm required to determine. Whether [defendant] was kissing his son or not kissing his son, quite frankly, . . . is really not something I'm overly concerned with. . . . [¶] The problem is that the kid was there to begin with, *that Mr. McKinney [another sex offender] was there to begin with, and compounding it, [defendant] didn't report it.* That's the big problem here. . . . [¶] . . . *That was a transgression of the rules.*" (Emphasis added.)

Thus, the underlying basis for the probation violation was defendant's termination from the SORT program for willfully disregarding and failing to comply with its rules, not just for failing to report his contact with his son.

Simply stated, there was no due process violation, and defendant could not dispute he violated his probation by being terminated from the SORT program.

II

According to defendant, the trial court "abused its discretion in sentencing [him] to six years in state prison for failing to report one brief Christmas Eve visit with his son." Defendant concedes that the court lacked the power to reduce the six-year sentence which previously had been imposed but its execution suspended. He also concedes that the court's exercise of discretion to deny reinstatement on probation cannot be

overturned on appeal unless it was "arbitrary or irrational." But, he argues, it was such an abuse of discretion not to reinstate defendant on probation "for failing to report a contact that even the trial court did not consider to be 'a big deal' [counsel's words, not the court's]."2

The People retort that defendant "was given, and squandered, a grant of probation following his conviction for lewd and lascivious acts with an 11-year-old girl. He was unable to abide by a simple but essential probation condition, complying with the rules of the SORT Program." Indicating the trial court was legitimately "concerned about [defendant's] long-term deception to the group in not reporting the unauthorized contact," which in the court's words, 'tears the heart out of the program . . . [and] makes any treatment possibilities null and void,'" the People argue the court acted well within its discretion in refusing to reinstate defendant on probation.

Once again, the People's position prevails because defendant has too simplistic a view of this case. The probation officer recommended against reinstating defendant on probation for the following reason: "Having contact with minors is a significant violation of the defendant's terms and conditions of probation as well as his treatment contract. Honesty also plays a major role in the defendant's success in treatment. Yet, [defendant] failed to

² The record does not support defendant's other claim that he was precluded from cross-examining witnesses and presenting evidence regarding his failure to report the contact with his son and another sex offender.

be honest regarding contact with his son Further, [he] has failed to convince this officer that he will not be willing to lie again in the future if he feels it is necessary. It appears that the defendant knew from the beginning that contact with his son was forbidden and he chose to hide the fact that he had seen his son because it was beneficial for him to do so. . . . Mr. Blasingame and his treatment team at New Directions to Hope . . . note that the defendant has no support system except for people who associate with other known sex offenders and there would likely be no one they could approve as a chaperone to allow the defendant contact with his son or any other minor in the future. They also noted that . . . with the ongoing denial and manipulation of the program rules, the defendant left them no other choice than to terminate him from the program. [¶] It is clear that [defendant] failed to take advantage of his grant of probation or the benefits of participating in his sex offender treatment program. Without the desire to make changes in his life and the commitment to follow the rules, the defendant is seen as a danger to the community. Therefore, this officer respectfully recommends that the defendant's probation be revoked and not reinstated and that [he] be sentenced to the California Department of Corrections."

The trial court did not act arbitrarily, capriciously, or beyond the bounds of reason in agreeing with the probation officer's assessment and recommendation.

DISPOSITION

The judgment is affirmed.

SCOTLAND, P.J.

We concur:

HULL, J.

ROBIE, J.